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## ABSTRACT

The content of the 1986 Immigration Reform and Control Act is described, its current interpretations are examined, and the implications for developing a responsible language and citizenship curriculum to conform to the legislation are discussed. Specific attention is focused on the law's requirement that illegal aliens applying for amnesty and permanent resident status must either demonstrate proficiency in English and have an understanding of United States history and government, or document satisfactory progress in a recognized course of study leading to that goal. Issues discussed include the standards for language proficiency levels, the definition of "satisfactorily pursuing a course of study," reliability and validity in testing knowledge of history and government, the potential for conflict between minimal proficiency in English and the need to express a knowledge of history and government, and the confidentiality of alien applicant information. It is concluded that educators can be instrumental in helping eligible aliens gain permanent resident status by advocating fairness in the regulations and designing appropriate curricula, looking beyond satisfying immediate requirements and offering a full spectrum of educational programs geared to helping this population gain access to all the services to which they are entitled. (MSE) (Adjunct ERIC Clearinghouse on Literacy Education)

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**THE TOMÁS RIVERA CENTER**

*A National Institute for Policy Studies*

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The Tomás Rivera Center encourages individual authors to express their analyses and opinions in the works published by the Center. The positions taken by individual authors, however, should not be taken as reflecting those of the Tomás Rivera Center, its staff, board of trustees, or funders. This is the first of three papers that Heide Wrigley is going to write for the Center on how the INS is interpreting the language issues contained in the 1986 Immigration Reform and Control Act.

The Immigration Reform and Control Act (IRCA), signed into law by President Reagan on November 6, 1986, constitutes the most sweeping change in U.S. immigration law since 1965. It contains two major provisions: the opportunity for "illegal aliens" who meet certain requirements to become legal residents and sanctions against employers who knowingly hire undocumented workers. Individuals wishing to become legal residents must file an application for and receive temporary resident status before May 1988. So far, efforts to extend the deadline have been unsuccessful. To become permanent residents they must reside in the United States another eighteen months and fulfill a second set of provisions. After completing that eighteen months residency, they have one year to apply for permanent resident status. Educators, service providers, and community agencies are mostly concerned with the period between temporary and permanent status known as the second stage.

Among the most significant requirements for receiving permanent resident status are that applicants demonstrate proficiency in English and understanding of the history and government of the United States or document that they are making satisfactory progress in a recognized course of study leading to that goal. The law, as it stands, raises more questions than it answers. Ambiguities in the wording of the law and the scarcity of information on second-stage issues frighten, confuse, and frustrate individuals who have started the legalization process. Many eligible applicants are reluctant to apply until key issues have been clarified. The Immigration and Naturalization Service (INS) has not told applicants exactly how much English they will need to demonstrate, how much government and history they will need to know, or how such knowledge will be assessed. In addition, applicants have not been informed what courses of study will be recognized or how long they will have to attend those classes in order to prove they are progressing satisfactorily.

Service providers share this confusion, and many agencies are beginning to pressure federal agencies to resolve the ambiguities and clarify the key issues in the law. In California the following service providers are demanding answers: community colleges (represented by

Juan Cruz from the chancellor's office of the California community colleges), public schools (such as the Los Angeles Unified School District), community-based groups that have been designated to ease the application process (such as the Catholic Charities), and national advocacy organizations (such as the National Association of Latino Elected and Appointed Officials and the National Council of La Raza). These groups are discussing their views with the Immigration and Naturalization Service, the agency responsible for enacting the law, and have forwarded their comments to the Department of Health and Human Services (DHHS), the department that allocates funds to states seeking reimbursement for amnesty-related services. In addition, professional organizations such as the California Teachers of English as a Second Language (CATESOL) and Teachers of English to Speakers of Other Languages (TESOL) have passed or are planning to present resolutions that take a stand on the proposed amnesty legislation.

Besides seeking to clarify the legalization requirements and advocating a fair interpretation of the law, local school districts and community-based organizations are discussing ways to meet the needs of individuals eligible for amnesty. California, for example, has formed a state task force to be directed by Assistant Superintendent of Public Instruction Gerald Kilbert and co-chaired by Carlos Gonzáles of the California Department of Education and Domingo Rodríguez of the Los Angeles Unified School District. The task force is reviewing the federal requirements for agencies seeking funding under the State Legalization Impact and Assistance Grants (SLIAG) and is determining what the state requirements for that aid will be. Under this program, the federal Department of Health and Human Services will provide money that the states will then distribute to agencies providing educational services to individuals who apply for amnesty in their states. These agencies will have to meet both federal and state criteria in order to receive SLIAG funding.

This paper aims to provide educators involved in program administration, curriculum design, materials development, and teacher training with information on what the law says, how it is being interpreted, and what such interpretations mean for developing a responsible language and citizenship curriculum.

## EDUCATIONAL PROVISIONS OF THE LAW

According to the Immigration Reform and Control Act an applicant must

1. demonstrate "minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States" or
2. show that he or she "is satisfactorily pursuing a course of study, recognized by the Attorney General, to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States."

The implications of the law for instructional practice are not clear. During the first stage of the legalization process, the Department of Immigration and Naturalization has spent most of its time and energy providing individuals with information on who is eligible and how they can apply. The INS has not, however, publicized the details of how it is going to define or assess acceptable language levels. Nor has the INS published details on the levels of education and literacy an applicant must possess to be able to answer questions about U.S. history and government nor established guidelines for determining whether an applicant is indeed satisfactorily pursuing a recognized course of study. Given these ambiguities, the following issues need to be addressed.

### 1. Standards for Proficiency Levels

The federal regulations cite "minimal" understanding of "ordinary English" without defining either term. This lack of definition has confused service providers and caused frustration and anxiety among applicants: On the one hand, the INS regulations suggest that only low levels of proficiency (that is, minimal proficiency, basic English) are required to pass the test; on the other hand, the INS states that applicants will need to know enough English to be able to understand and respond to questions about government and history. The INS has indicated that the proficiency level necessary to read and understand the simplified edition of the Federal Citizenship Text series is a student performance level VI (SPL VI) with a corresponding score

on the Basic English Skills Test (BEST) of 58-64 and a California Adult Student Assessment (CASAS) level of 215. SPL levels, developed in 1985 by the Mainstream English Language Training Project (MELT) for the Department of Health and Human Services, Office of Refugee Resettlement, are explained for the most part in functional terms and range from Level I (functions minimally, if at all, in English) to Level X (demonstrates ability equal to that of a native speaker of the same socioeconomic level). The INS indicates that to comprehend the basic text the student "may attempt to read some non-simplified materials . . . , but needs a great deal of assistance." This standard is several steps above what most language educators consider minimal proficiency in ordinary English.

Thus although some indications of the levels of reading comprehension that will be necessary for understanding citizenship texts are available, expected levels of proficiency at the INS "interview" have not been defined yet; neither has the service indicated whether their examiners will adjust their spoken English to the level of the individual applicant. Similarly, the INS has not described the English literacy requirement in detail.

## **2. Definition of "Satisfactorily Pursuing a Course of Study"**

The INS has detailed the requirements of the kind of programs to be recognized, yet its explanations of what may constitute the satisfactory pursuit of knowledge in a recognized course are far from clear. To date the INS has indicated that a course will be recognized if it is

- sponsored or conducted by an established, certified public or private institution of learning;
- offered through a school that can issue Form I-20;
- offered by qualified, designated entities in good standing;
- offered by educational programs approved by INS district directors; or
- approved under the Adult Education Act.

To be recognized all courses in amnesty instruction must use the Federal Citizenship Textbook series published by Miranda Associates, Inc. The INS does, however, recognize

courses that use these materials in a variety of ways: as basic text, as reference for developing instructional materials for ESL/Citizenship curriculum, as review questions for the residency exam, or as glossaries for developing vocabulary. Since the INS also accepts courses that use photographs to stimulate discussion and includes an unspecified category of acceptable uses, curriculum developers may integrate the content of the official textbooks into their courses in ways that are appropriate to the educational background and language proficiency levels of distinct groups of students. Relatively high levels of literacy are needed to succeed in regular citizenship classes, and a great demand exists for recognized courses at the lower proficiency levels.

In unpublished draft materials, the INS defines satisfactorily pursuing knowledge as "attendance in a recognized program for at least one half of the course as appropriate for the students' ability level, (with demonstrated) progress according to the performance standards of the English/Citizenship course(s) prescribed by the program in which they are enrolled." The INS has made it clear to service providers that attendance in an ESL class alone does not fulfill the requirement, but that attendance in a citizenship class taught in English does because such classes presume the requisite levels of language and literacy. Yet major questions remain unanswered: Can students attend a citizenship class taught bilingually and thus fulfill both the minimal proficiency and the knowledge of history requirements? Can students fulfill the requirements by only enrolling in a citizenship course taught in their native language, or will they have to attend an ESL course simultaneously? If they attend a citizenship course taught in their native language, will the INS assess their proficiency in English when they present their affidavits of satisfactory pursuit in a citizenship course? And finally, will the INS recognize bilingual courses that teach literacy and incorporate citizenship materials?

Many applicants will probably choose to prove their satisfactory pursuit rather than to appear before an INS examiner. They will, however, only be able to choose that option if a sufficient number of appropriate courses are available to them. To meet the expected demand, a variety of courses will have to be designed:

- ° basic literacy classes taught in English and the applicants' native language that integrate citizenship and English;
- ° lower-level ESL/citizenship courses that do not require students to have a high level of literacy to understand the course content;
- ° citizenship courses taught bilingually;
- ° citizenship courses taught in the native language with possible ESL support;
- ° sheltered citizenship courses taught at intermediate levels, possibly with bilingual support;
- ° citizenship courses that use simplified versions of the text;
- ° regular citizenship courses that include workshops for applicants who want to review for the test.

As mentioned, students who have enrolled in these classes must demonstrate satisfactory progress in order to obtain an affidavit. How this progress will be measured has become an important issue because students who fail to get an affidavit will probably not be able to pass the INS examination nor to gain legal status. At this time, some agencies are suggesting that in order to ensure the integrity of the evaluations, tests should be administered before and after students take the courses; Others consider simple enrollment sufficient to satisfy the requirement.

### 3. Reliability and Validity in Testing

As the law stands the knowledge of an applicant will probably be left up to the individual examiner. Although this process allows examiners to ask questions geared to the educational background of the applicant, it may not prevent them from being arbitrary and applying the process capriciously. As a result, even qualified applicants may be intimidated by examiners who lack empathy and sensitivity. Early indications are that the INS will maintain a highly flexible system that allows examiners the greatest possible discretion. Some agencies have suggested that examiners choose from a pre-established set of study questions. Since many of the review questions contained in the federal texts are linguistically complex (for example, name

one characteristic that cannot be used to deny voting rights) the use of pre-established questions will not protect applicants from examiners seeking to make the examination too difficult for their level of language proficiency.

Underlying the assessment issue is the deeper question of how to evaluate citizenship fairly and accurately. We can assume from the discussions taking place in Congress that the intent of the law is to ensure that newly legalized residents be "good citizens" in that they be productive members of U.S. society. Should we define good citizens as individuals who understand the basic laws of the land, maintain gainful employment, and understand the structure of their community? If so, undocumented workers who meet the general amnesty requirements should certainly be considered good citizens. Or should we measure good citizenship as knowing the names of political leaders, their wives, and their horses<sup>1</sup> and as being able to read sentences chosen at random from the federal text? There seems to be little functional validity in a test that contains questions most native-born U.S. citizens would not be able to answer.

The INS, however, is not likely to change its interpretation of how knowledge of history and government should be assessed. Educational agencies involved in curriculum and instruction will therefore need to balance their own views of what constitutes good citizenship and how it is to be taught against the requirements of the Immigration and Naturalization Service.

The lack of reliable, valid, and standardized procedures for assessing good citizenship presents serious cause for concern. Failure to establish a fair protocol for assessment threatens to cause applicants unnecessary fear and confusion and to generate unjust and discriminatory evaluation practices.

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<sup>1</sup> We have reports of one examiner who has asked applicants to name the governor's wife. Similarly, an INS official in meetings with curriculum developers commented that "of course there will be the occasional examiner who might ask the name of General Grant's horse." He maintained, however, that "overall the adjudication process would be fair."

#### 4. Minimal Language Proficiency versus Knowledge of History and Government

The language proficiency requirements in the law assume that knowledge of government and history can be attained and demonstrated by applicants who possess only minimal proficiency in English. The contradictions are illustrated by the way an INS official explained the examination process. According to Paul Gilbert, an official with the INS office in Los Angeles, examiners might assess language by asking applicants to respond to simple directions, such as stand up and sit down, and assess literacy by having them write a simple, short sentence of monosyllabic words. To demonstrate knowledge of history and government, however, examiners might ask applicants to answer questions about the Revolutionary War and the formation of the Constitution. Applicants with low levels of English will probably be unable to understand or answer such questions unless they are able to memorize the questions and answers before the test.

#### 5. Confidentiality

As the IRCA now stands, the government will fund educational services only if aliens attending the courses are clearly eligible for amnesty. To document eligibility, schools will have to request and keep records of the alien identification numbers of their students. Many programs are concerned that these requirements, coupled with the right of the INS to monitor their programs, will violate the confidentiality of student files and might put students not eligible for legalization at risk. Agencies that do not wish to serve as police for the INS are discussing how to respond to the identification requirements. As a result of concerns expressed by various individuals, the INS may allow a liaison person who is not an INS official to monitor the programs.

#### CONCLUSION

The Immigration Reform and Control Act will affect millions of lives. How the act is interpreted and enacted will determine whether eligible aliens will be able to stay in this

country where they have lived, worked, and raised their children or whether they will be subject to deportation. Educators can be instrumental in helping eligible aliens gain permanent resident status by advocating fairness in the INS regulations, which are expected to be published in draft form in early March, and by designing curricula that prepare students to satisfy the legalization requirements. Educators and educational programs should look beyond satisfying the immediate requirements of the law to offering a full spectrum of educational programs geared to helping these people gain access to all the knowledge and services to which they are entitled.

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